& Ad. 443; *Gill* v. *Bicknell*, 2 Cush. 355, 358. To shift the hardship of the statute from the parties to the contract to their go-between, the auctioneer, would be to disregard principle and serve no business interest.

THE CONSIDERATION IN COMPROMISES. — It is an accepted rule of law that a forbearance to sue may be a good consideration to support a contract. It is equally accepted that if the claim forborne is unreasonable and dishonest, the contract is unenforceable on grounds of public policy. The case of a claim reasonably disputed recently arose in New York. *Cox et al.* v. *Stokes et al.*, New York Law Journal, Oct. 15, 1898. In that case the respondents had promised the appellants to perform a railroad reorganization agreement, the consideration for that promise being that the appellants, the reorganization committee, should discontinue litigation pending against the respondents. The court held that this forbearance to press a disputed claim was good consideration.

This decision represents the law in almost all jurisdictions. *Cook* v. *Wright*, 1 B. & S. 559; *White* v. *Hoyt*, 73 N. Y. 505. Whether the claim is reasonable, or unreasonable but *bona fide*, would seem to make no difference in principle; for the claim is in each case actually invalid, and the better authority holds that a forbearance to sue in each case is a good consideration. *Callisher* v. *Bischoffsheim*, L. R. 5 Q. B. 449; *Prout* v. *Pittsfield Fire District*, 154 Mass. 450. To determine upon principle whether in either case the consideration is valid, involves a questioning of the accepted theories of consideration. The most scientific hypothesis ignores the benefit to the promisor and fastens upon the detriment to the promisee. But it limits detriment to legal detriment, — doing or refraining in any case whatever when the promisee had a legal right to adopt a contrary course. To apply this test in the case of compromise — can a court say that it is a legal detriment to forbear from pursuing a claim which in fact is invalid? A Mississippi court has been logical enough to decide that in such case there is no consideration, and indeed no other conclusion seems possible, if the theory of legal detriment be held. *Gunning* v. *Royal*, 59 Miss. 45.

That theory, however, is found to fail elsewhere in the law of contract. Where a debtor compounds with his creditors, where a promisee gives a consideration which he is already obliged by contract to perform, and where one innocently performs a tort at request, good considerations are found which could never be by the theory of legal detriment. The just result reached in all of these cases seems to point to a broader test of *prima facie* consideration than that of legal detriment — the test of actual detriment. There are many grounds of public policy which make *prima facie* obligations unenforceable. Such a rule of policy of broad application is the legal detriment rule itself, and the error which leads to its adoption as a basis of consideration instead of a secondary rule in regard to the enforcement of contracts is thus explained. In the present case the evident policy of the modern law to favor business compromises as an escape from litigation prevails, and the *prima facie* obligation supported by an actual detriment is undisturbed. But the fact remains that in such a case there is no legal detriment, and it can be explained upon no narrower conception of *prima facie* consideration than actual detriment — any act, forbearance, or promise given by the promisor at the request of the promisee.